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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,796	11/15/2001	Jeffrey C. Ostler	5741.11	5978

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EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/993,796

Applicant(s)

OSTLER ET AL.

Examiner

Michael Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 and 27-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 19-25 is/are rejected.
- 7) ☐ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

#### ***Drawings***

1. Drawings are acceptable.

#### ***Election/Restriction***

2. Applicant's election of invention II without traverse of the restriction requirement in Paper No. 11 is acknowledged and made final.
3. Claims 1-18 and 27-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claim(s) 19-21 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Gyimothy which discloses all the claimed elements including:

(Re: cl 19) A system comprising: at least one slanted channel capable of receiving a plurality of rounded capsules; a delivery chute (12),  
slanted channel being open-ended so as to communicate with said delivery chute (20/21);

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and a movable capsule transport located beneath said delivery chute and adapted to transport at least one of said rounded capsules from said delivery chute to a desired location (30 fig 13; c6 L 15-34)

(Re: cl 20) delivery chute moves in a substantially vertical direction when said transport moves (c4 L 4-21)

(Re: cl 21) delivery chute is attached to said transport via a pivot bar that moves said delivery chute when said transport is moved (9).

6. Claim(s) 19, 22-25 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Ford which discloses all the claimed elements including:

(Re: cl 19) A system comprising: at least one slanted channel capable of receiving a plurality of rounded capsules (p1 c1 L 44-c2 L 5);  
a delivery chute, said slanted channel being open-ended so as to communicate with said delivery chute (between 66/67 below  $\frac{3}{4}$  & above D);  
and a movable capsule transport located beneath said delivery chute and adapted to transport at least one of said rounded capsules from said delivery chute to a desired location (D)

(Re: cl 22) rotating disc is electronically activated and only after insertion of a token into an electronic token slot (p3 c1 L 11-67)

(Re: cl 23) comprising a plurality of slanted channels and wherein said slanted channels all lie in one plane (C fig 1)

(Re: cl 24) slanted channels all slant in one direction (C fig 1)

(Re: cl 26) delivery chute is movable within the same plane as the plane created by the slanted channels and wherein the transport is movable within a plane substantially perpendicular to said plane created by the slanted channels.

(Re: cl 25) rounded capsules have a four inch diameter (p1 c1 L 44-c2 L 5).

#### ***Allowable Subject Matter***

7. Claim 26 is objected to as being dependent claims premised upon a rejected base claim but would be allowed if the re-written in independent form or if the limitations of an allowable claim were incorporated within the independent base claim from which this claims depend or if re-written premised upon dependence from an otherwise allowable base claim.

#### ***Response to Arguments***

8. Applicant's arguments are deemed persuasive in overcoming the anticipatory rejection evidenced by Zhang et al..

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The applicant's remaining arguments have been fully considered but they are unpersuasive in overcoming the rejections.

*The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin

Compan<sup>1</sup> includes definitions for channel including:

3. A broad strait, especially one that connects two seas.
4. A trench, furrow, or groove.
5. A tubular passage for liquids; a conduit.
6. A course or passage through which something may move or be directed: *new channels of thought; a reliable channel of information.*
7. Often **channels**. A route of communication or access: *took her request through official channels.*<sup>2</sup>

The channel of Gymothy meets the definitions 6 and 7. of the American Heritage dictionary. That the preferred embodiment might be differing size from Gymothy is not determinative in distinguishing over the prior art-the CLAIMS need distinguish over the prior art, particularly when applicant has elected not to limit claims with the narrower elements in his arguments.

A pivoting about the vertical bar takes place. An axis or axle serves as a pivot bar.

There is no limitation requiring the pivot bar be separate from the tablet issuing mechanism.

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<sup>2</sup> *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; f

Ford, slant merely means some portion of the channel is not vertical. The converging sides qualify as slanted channels. A dispenser capable of handling the wrapped hot dogs with buns readily handles capsules of 4" diameter.

As applicant has not cancelled claim 22, the anticipatory rejection is maintained even though applicant has voluntarily withdrawn the claim as being unpatentable per 35 U.S.C. 112.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on (703) 306-4173. The fax number for the Group is (703) 305-7687.

*Michael E. Butler*

Michael E. Butler

Examiner

  
DONALD P. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3653